

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

|                                      |   |   |
|--------------------------------------|---|---|
| <b>ESTATE OF</b>                     | : |   |
| <b>ROGER D. OWENSBY JR., et al.,</b> | : |   |
|                                      | : |   |
| <b>Plaintiff,</b>                    | : | <b>Case No. 01-CV-769</b>                 |
|                                      | : |   |
| <b>v.</b>                            | : | <b>Senior Judge S. Arthur Spiegel</b>     |
|                                      | : |   |
| <b>CITY OF CINCINNATI, et al.,</b>   | : | <b>Magistrate Judge David S. Perelman</b> |
|                                      | : |   |
|                                      | : |   |
| <b>Defendants.</b>                   | : |   |

**PLAINTIFF'S APPLICATION FOR ATTORNEYS FEES  
ASSOCIATED WITH MOTION TO COMPEL RESPONSES TO  
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS**

**I. INTRODUCTION**

On September 18, 2003, Plaintiff served his Second Request for Production of Documents upon Defendants City of Cincinnati and its Police Chief. Defendants ignored these document requests, refusing to file a timely response to Plaintiff's discovery. After informal attempts at resolution failed, Plaintiff filed a Motion to Compel. Doc. 66. In conjunction with the filing of their opposition memorandum, in December, 2003, these Defendants finally responded to Plaintiff's document request.

This Court has issued two Orders awarding Plaintiff reasonable attorneys fees and costs associated with having to compel these Defendants to respond to Plaintiff's Second Request for Production of Documents.<sup>1</sup> In these Orders this Court directed that the Plaintiff confer with the

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<sup>1</sup>Doc. 81, Order; Doc. 83, Order (1) Vacating the Order of January 9, 2004 (Doc. 81); (2) Denying as Moot Plaintiff's Motion for an Order to Compel (Doc. 66); and (3) Granting Plaintiff Leave to Submit An Affidavit In Support Of His Request For Expenses And Fees, If Necessary.

Defendants in an effort to amicably settle the payment of attorneys fees.<sup>2</sup>

Since that time, Plaintiff's counsel has written two letters and has spoken to defense counsel on four separate occasions in an effort to resolve this matter without judicial intervention. Martins Declaration, attached. As with the Second Request for Production of Documents, these Defendants have ignored Plaintiff's attempts to informally resolve this matter. Thus, Plaintiff has no alternative but to now file this Application for Attorneys Fees.

## **II. PLAINTIFF'S REQUESTED FEES ARE REASONABLE**

In support of this application, Plaintiff's counsel submit the attached Declaration of Counsel and Exhibit thereto which set forth the hours expended on this matter, the names of the attorneys performing the services, the attorney's regular hourly rate, the status and experience of the attorneys involved, and the lodestar amounts. The detail of the attorney time expended on this matter is set forth in Exhibit A to the Declaration of Paul B. Martins.

### **A. The Rates Requested By Relator's Counsel Are Reasonable Market Rates.**

The presumptive reasonable rate for an attorney's services is that which is set by the marketplace, i.e., what an hourly client pays for those services. *Northcross v. Board of Educ. Of Memphis City Sch.*, 611 F.2d 624, 638 (6th Cir. 1979). Such a marketplace value normally reflects the attorney's training, background, experience, knowledge, and skill. *Id.* As indicated in the attached Martins Declaration, the rates associated with the three Plaintiff's counsel are reasonable. These rates accurately reflect the marketplace since they are paid by clients of Helmer, Martins & Morgan Co., L.P.A., and have previously been reviewed and approved by this Court. Martins Decl., ¶ 15.

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<sup>2</sup>Doc. 81, Order, at ¶ 2; Doc. 83, Order, at ¶¶ 2, 3.

**B. Plaintiff's Counsel's Time Was Reasonably Expended.**

As explained in the attached Martins Declaration, Plaintiff's Counsel have made a good faith effort to remove all possible duplication of effort from the amount of time claimed, having deducted more than 20 hours of time from the application. Martins Decl. at 3, n. 1, n. 2, n. 3.

**III. CONCLUSION**

First the City of Cincinnati and its Police Chief ignored Plaintiff's document requests forcing us to file the Motion to Compel. In response this Court ordered the payment of attorneys fees. Next, these Defendants ignored Plaintiff's attempts to informally resolve the payment of attorneys fees, necessitating the filing of this Application.

Plaintiff's claimed attorneys fees of \$4,797 are reasonable and should be awarded.

Respectfully submitted,

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/s/Paul B. Martins  
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*Trial Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Plaintiff's Application for Attorneys Fees Associated with Motion to Compel Responses To Second Request For Production of Documents, was electronically filed on April 21, 2004. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Paul B. Martins